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**Before the**
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**

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| In the Matter of | ) | |
| | ) | |
| Implementation of | ) | CC Docket No. 96-98 |
| the Local Competition Provisions in the | ) | |
| Telecommunications Act of 1996; | ) | |
| | ) | |
| Interconnection Between Local Exchange Carriers | ) | CC Docket No. 95-185 |
| and Commercial Mobile Radio Services Providers | ) | |

# COMMENTS OF MEDIAONE

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## COMMENTS OF MEDIAONE

MediaOne Group, Inc. ("MediaOne") submits these comments in response to the Commission's Second Further Notice of Proposed Rulemaking ("Second FNPRM") in the above-captioned docket.[1/] MediaOne is the parent of the fourth largest cable television multiple system operator ("MSO") in the United States.[2/] MediaOne subsidiaries provide residential facilities-based competitive local telephone service in Atlanta, Georgia; Los Angeles, California; Pompano and Jacksonville, Florida; several communities surrounding Boston, Massachusetts; Detroit, Michigan; and Richmond, Virginia. MediaOne plans to provide telecommunications service to additional communities in the near future.

The rollout of voice telephony -- together with high-speed data service and video programming -- is a key component of MediaOne's efforts to bring integrated broadband services to millions of consumers. By 2001, MediaOne plans to make its broadband services available to over 90 percent of all homes passed by the company's cable systems in its multi-state region. MediaOne

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1/ In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Services Providers, CC Docket Nos. 96-98 and 95-185, Second Further Notice of Proposed Rulemaking, FCC 99-70 (released April 16, 1999) ("Second FNPRM").

2/ MediaOne expects to complete a merger with AT&T Corp. in the first quarter of 2000.

already is offering these services to a diverse base of residential subscribers, including customers in urban and rural areas with low incomes or ethnically diverse populations. By the end of 2000, MediaOne will have invested over $7 billion in risk capital to upgrade its broadband networks.

MediaOne's strategy for bringing advanced voice, video, and data offerings to consumers cannot succeed if incumbent local exchange carriers ("LECs") are allowed to prevent competitive access to crucial telecommunications functions and facilities. Access to certain unbundled network elements ("UNEs") is critical to MediaOne's business plans and integral to achieving Congress's objective of promoting a fully competitive telecommunications marketplace that will bring new packages of services, lower prices, and increased innovation to residential consumers.

## INTRODUCTION AND SUMMARY

The primary purpose of the Telecommunications Act of 1996 (the "1996 Act")[3/] was to encourage the rapid development of competition in the market for local telecommunications services. To achieve this goal, Congress adopted several mechanisms to eliminate barriers to entry, including section 251(c)(3), a provision that requires incumbent LECs to "unbundle" elements of their networks and make them available to competitors.[4/] In implementing that statutory mandate, the Commission adopted section 51.319 of the Commission's rules ("Rule 319"), which requires all incumbent LECs to provide non-discriminatory access to seven network elements on an unbundled basis to any requesting telecommunications carrier.

Earlier this year, the United States Supreme Court upheld most of the Commission's regulations implementing the 1996 Act, including the agency's authority to establish which elements incumbent LECs must make available to competitors. The Court held, however, that the

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3/ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, codified at 47 U.S.C. §§ 151 et seq.

4/ 47 U.S.C. § 251(c)(3).

Commission had failed to provide a principled basis for including the seven elements listed in Rule 319. The Court did not rule that the FCC erred in its choice of elements; it merely required the Commission to provide reasonable criteria for excluding some elements and including others.

While the challenges to the local competition rules were pending in the courts, MediaOne and other competitors were working to roll out competitive local telecommunications services, but competitive LECs encountered numerous barriers erected by incumbents. The result has been slower deployment of facilities and higher cost structures for competitive LECs seeking to offer these services, denying consumers the benefits of the 1996 Act. Specifically, as a facilities-based competitive LEC, MediaOne has faced the following significant barriers:

- Trunking. MediaOne customers experienced severe service disruptions in late 1997 and early 1998 as BellSouth delayed trunk group additions by periods of 30 to 75 days. In Bell Atlantic, BellSouth and U S WEST territories, MediaOne still experiences delays in the processing of interconnection trunk groups. In California, GTE refused to install trunks to accommodate MediaOne's forecasts, limiting MediaOne to ten trunks per tandem.

- Change management and cut-overs. GTE has experienced translation errors that have blocked incoming calls to MediaOne customers. GTE does not have enough trained staff to handle trouble resolution, and it does not follow the agreed change management process. Bell Atlantic failed to include MediaOne's NXX codes in its directory assistance database, and has refused to intercept messages for customers who change to MediaOne service with a new telephone number. BellSouth has discriminated against MediaOne customers in providing repair services and, in California, GTE has engaged in anticompetitive win-back efforts.

- Signaling. Pacific Bell and GTE each refused to provide message testing necessary to provide certain services, and Bell Atlantic would not provide MediaOne's SS7 provider with the signaling parameters needed for MediaOne to implement Caller ID. These refusals to cooperate have forced MediaOne to waste resources and caused frustrating delays in offering services.

- Number portability. Most incumbents in MediaOne's operating territory have been slow to adopt electronic processes, forcing MediaOne to fax clarifications or use other manual systems. This has significantly delayed the porting process and, hence, the delivery of MediaOne telecommunications services to customers. While the incumbents' number portability processes generally have improved, MediaOne still must spend inordinate amounts of time monitoring those processes to detect and rectify all-too-frequent errors

- Multiple dwelling unit ("MDU") wiring. As MediaOne explains below, BellSouth has maintained control over wiring between the minimum point of entry and individual dwelling units in MDUs in its territory, allowing it to erect barriers to entry by establishing uneconomic and operationally burdensome procedures for competitive LECs seeking access to individual units.

As a first step toward addressing barriers like the ones outlined above, MediaOne urges the Commission to reaffirm its decision in the Local Competition Order[5/] to establish a uniform national list of unbundled network elements ("UNEs").[6/] In addition, as discussed below, this minimum set of UNEs should take into account the experience of competitive LECs in obtaining access to incumbent networks since the adoption of the 1996 Act. To avoid disruption to competitive LECs and the consumers they serve, the Commission should act quickly to establish a UNE list applicable to all incumbent LECs, with any future modifications to the list to come in the course of future rulemaking proceedings.

## COMMENTS

### I. THE COMMISSION SHOULD CONTINUE TO IDENTIFY A MINIMUM SET OF NETWORK ELEMENTS THAT MUST BE UNBUNDLED ON A NATIONWIDE BASIS

MediaOne agrees with the Commission's tentative conclusion that it should continue to identify a minimum set of network elements that must be unbundled on a nationwide basis.[7/] Nothing about the Supreme Court's decision in AT&T v. Iowa Utilities Board calls into question the power of the Commission to establish a national UNE list, and uniform unbundling requirements are

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5/ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 15499 (1996) ("Local Competition Order"), affirmed in part and reversed in part sub nom. AT&T v. Iowa Utilities Board, 119 S.Ct. 721, __ U.S. __ (1999) ("AT&T v. Iowa Utilities Board").

6/ See Local Competition Order at ¶ 241-246.

7/ See Second FNPRM at ¶ 14.

far preferable to multiple sets of standards applied from state to state or community to community. To the contrary, the Court made clear its view that national rules "administered by 50 independent state agencies is surpassing strange."[8/] Similarly, as the Commission has observed, national rules are appropriate "where they facilitate administration of sections 251 and 252, expedite negotiations and arbitrations by narrowing the potential range of disputes . . . [and] offer uniform interpretations of the law that might not otherwise emerge until after years of litigation."[9/]

Adoption of minimum national unbundling requirements is wholly consistent with the pro-competitive goals of the 1996 Act. By increasing predictability and certainty, and by facilitating entry by competitors operating in multiple states, competitors can more easily attract the investment needed to construct and operate facilities-based networks.

Without a uniform national baseline for access to incumbent networks, competitive LECs will be forced to contend with a crazy-quilt of state-by-state regulation or private negotiations between parties of grossly disproportionate bargaining power. As a competitive LEC certified to provide local exchange and intrastate interLATA telecommunications services in eight states, MediaOne would be required to conform its network design to eight or more inconsistent sets of interconnection and unbundling requirements. Such an approach would result in enormous administrative burdens, even before the litigation that would be sure to follow each assessment of the need for UNEs in a particular market. The only beneficiaries of such an arrangement are incumbent LECs, who have an interest in making competitive entry as complicated and expensive as possible for both competitors and regulators.

As a legal matter, the most straightforward reading of section 251 favors uniform unbundling rules. Section 251(d)(2) specifies factors to be considered by the Commission – not the states – in deciding which network elements must be unbundled.[10/] If Congress had intended the list of UNEs

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8/ See AT&T v. Iowa Utilities Board at 730, n.6.

9/ Local Competition Order at ¶ 41.

10/ See 47 U.S.C. § 251(d)(2).

to vary according to local market conditions, it would have granted explicit state authority to the states' regulators to decide which elements to apply. This is precisely the approach taken with regard to exemptions for rural telephone companies and resale restrictions.[11/] The fact that the 1996 Act gave the FCC responsibility for deciding which elements to unbundle while expressly providing for state regulators to make certain other decisions indicates that Congress envisioned nationwide unbundling rules.

Of course, states play a central role in administering the requirements imposed by sections 251 and 252, including unbundling obligations, by overseeing negotiation and arbitration of interconnection agreements between carriers. The existing framework of federal rules administered in the first instance by state utility commissions supervising private negotiations is sound, and a uniform set of national unbundling rules would not undercut this division of responsibilities. As the FCC recently noted, state regulators help advance the statute's goals by enacting rules of their own that, in conjunction with federal rules, further the pro-competitive aims of the 1996 Act.[12/] A minimum set of national standards, however, guarantees that competitors will have access to the essential building blocks needed to offer service without awaiting individual decisions by state regulators.

The Commission should clarify that the states continue to have the authority to adopt additional unbundling requirements when they conclude that the absence of additional elements will prevent or impair the offering of planned telecommunications services. Any such state rules must build upon, and be consistent with, the minimum UNE requirements developed by the Commission.

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[11/] See 47 U.S.C. §§ 251(c)(4)(B) (rural exemptions) and 251(f) (resale restrictions).

[12/] See Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-48, 1999 FCC LEXIS 1327 (released March 31, 1999) ("Collocation Order") at ¶ 23.

## II. LIMITATIONS ON THE SCOPE OF THE NECESSARY AND IMPAIR STANDARDS

### A. The Relationship Between Sections 251(d)(2)(A) and 251(d)(2)(B)

Section 251(d)(2) of the Communications Act sets forth the criteria for the FCC's determination of which network elements must be unbundled by incumbent LECs.[13/] Section 251(d)(2)(A) provides that in deciding which network elements should be unbundled, the Commission "shall consider, at a minimum, whether . . . access to such network elements as are proprietary in nature is necessary."[14/] Section 251(d)(2)(B), which includes no reference to proprietary elements, sets forth a different test for the availability of UNEs: whether "the failure to provide access to such network elements would impair the ability of the telecommunications carrier seeking access to provide the services that it seeks to offer."[15/]

While some incumbent LECs have asserted that no element can be subject to the unbundling requirements of section 251(c)(3) unless it meets both the "necessary" and "impair" standards,[16/] this view is flatly at odds with the language of the statute. Section 251(d)(2)(A) applies only to proprietary elements. The Commission can require unbundling of any non-proprietary element when the failure to guarantee access would "impair" competitive provision of telecommunications services. Contrary to some incumbent LEC claims, the Supreme Court in AT&T v. Iowa Utilities Board did not state or imply that UNEs must meet both the "necessary" threshold of section 251(d)(2)(A) and the "impair" inquiry established by section 251(d)(2)(B). Rather, the Court simply

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13/ See AT&T v. Iowa Utilities Board, 119 S.Ct. at 734.

14/ 47 U.S.C. § 251(d)(2)(A) (emphasis added).

15/ 47 U.S.C. § 251(d)(2)(B) (emphasis added).

16/ See, e.g., Letter from William P. Barr, general counsel to GTE Service Corp., to Lawrence E. Strickling, Chief, Common Carrier Bureau, submitted as an ex parte presentation in CC Docket No. 96-98 (March 1, 1999) at 2 (arguing that holding of AT&T requires that unbundling requirements "must . . . rest on a showing that without access to the ILEC's network element, CLECs would effectively lose their ability to compete").

faulted the Commission for failing to announce a principle capable of limiting the reach of the "necessary" and "impair" standards; it did not address the relationship between the two provisions.[17/]

### B. The Meaning of "Impair" for Purposes of Section 251(d)(2)(B)

Although some parties would like the Commission to equate "impair" with "impossibility," there should be little dispute that a competitive LEC's ability to offer a telecommunications service is "impaired" under section 251(d)(2)(B) if its failure to obtain a requested unbundled network element adversely and materially affects that ability. Competitive carriers should not have to demonstrate that lack of a particular element would preclude all service.

Among the factors the Commission should recognize as relevant are: (1) whether cost differences between the incumbent's element and alternatives available to competitors are material when considered in relation to operating margins in the local exchange market; (2) whether the use of alternatives would allow competitors to offer service at a level of quality equivalent to service that would be possible with the use of the incumbent's element; (3) whether denial of access to an element will limit the geographic scope or coverage of competitors' services; and (4) whether denial of access to the incumbent's element would result in a material delay in competitors' ability to bring their services to market.[18/]

These factors would satisfy the need for limiting principles under AT&T v. Iowa Utilities Board because their application would exclude elements from the UNE list when competitors have a readily available – even if slightly more costly – alternative.[19/] Nevertheless, such criteria recognize

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[17/] See AT&T v. Iowa Utilities Board, 119 S.Ct. at 734-35.

[18/] The legislative history of the 1996 Act reflects the desire of Congress to enable competitors to provide service quickly, before constructing their own network facilities. See Joint Managers' Statement, S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 113 (1996) ("Joint Explanatory Statement") at 148; see also Local Competition Order at ¶ 231.

[19/] See AT&T v. Iowa Utilities Board, 119 S.Ct. at 735 ("the Commission's assumption that any increase in cost (or decrease in quality) imposed by denial of a network element renders access to that element 'necessary,' and causes the failure to provide that element to 'impair' the entrant's ability to furnish its desired services is simply not in accord with the ordinary and fair meaning of those terms").

that a material difference in the cost, quality, geographic reach, or timely availability of an element, or a combination thereof, may justify the element's inclusion in the set of network functions that must be unbundled.

### C. The Interpretation of "Necessary" and "Proprietary" in Section 251(d)(2)(A)

MediaOne shares the Commission's view that the term "necessary," in the context of section 251(d)(2)(A), means that a proprietary element must only be unbundled if it is a prerequisite to competition.[20/] Congress imposed the unbundling obligation on incumbent LECs in order to make available the network facilities and functions necessary for local exchange competition to flourish.[21/] To this end, the Commission should presume that a proprietary network element is necessary if it is required for the provision of a telecommunications service or for transport and termination. Likewise, the ruling in AT&T v. Iowa Utilities Board does not disturb the Commission's analysis of the term "proprietary" and, therefore MediaOne sees no reason to depart from the conclusion that elements incorporating industry-wide standards or protocols are not proprietary for purposes of section 251(d)(2)(A).[22/]

Taken together, the standards outlined above provide limiting principles that satisfy the concerns expressed by the Supreme Court in AT&T v. Iowa Utilities Board and remain faithful to both the language and the pro-competitive goals of the 1996 Act. While the factors identified by MediaOne require the exercise of judgment by the Commission, any analysis intended to balance the incentives for competition is by its nature a complex task requiring careful consideration by an expert decisionmaker.[23/] The incumbent LECs are sure to propose rules designed to exclude most

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[20/] See Local Competition Order at ¶ 282.

[21/] See, e.g. 141 Cong. Rec. H8464 (daily ed. Aug. 4, 1995) (statement of Rep. Hastings) ("This bill requires the Bell companies to interconnect with their competitors and to provide them the features, functions and capabilities of the Bell companies' networks that the new entrants need to compete.").

[22/] Local Competition Order at ¶282.

[23/] Cf. Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 842-43 (1984) (explaining basis for deference to statutory interpretation adopted by expert agency).

aspects of their networks from unbundling obligations automatically unless competitive LECs affirmatively demonstrate that provision of service would be impossible without those elements. The Commission, however, should not substitute a test based on facile assumptions for a meaningful inquiry into the conditions required to encourage ubiquitous competition in the telecommunications industry.

## III. ELEMENTS TO BE INCLUDED IN THE COMMISSION'S MINIMUM SET OF NETWORK ELEMENTS SUBJECT TO UNBUNDLING

### A. "Network Elements" Are Not Limited to Physical Facilities

The Commission should keep in mind that section 3(29) of the 1996 Act defines the term "network element" to include features, functions, and capabilities that are provided by means of such facility or equipment, including subscriber numbers, databases, signaling systems, and information sufficient for billing and collection or used in the transmission, routing, or other provision of a telecommunications service."[24/] In other words, the range of "network elements" potentially subject to unbundling is not limited to physical facilities and equipment.[25/] In adopting a broad definition of "network elements," Congress recognized a variety of features, functions, and capabilities as essential for the provision of telecommunications services. For example, the ILECs' operating support systems, i.e., "back office" databases, contain information vital to pre-ordering, ordering, provisioning, maintenance, repair, and billing.

Although MediaOne is a facilities-based telecommunications carrier that may be less dependent on network elements owned by incumbent LECs than some other competitive providers, it must nonetheless rely upon incumbents to process each and every one of its customers' service orders and pass traffic seamlessly among the interconnected networks. Moreover, the Supreme Court has already rejected the ILECs' claims that the Commission's designation of OSS, operator

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24/ 47 U.S.C. § 153(29).

25/ See AT&T v. Iowa Utilities Board, 119 S.Ct. at 734.

services and directory assistance as unbundled elements were beyond the Commission's authority.[26/] Consequently, the Commission can require unbundling of any element that otherwise meets the "necessary" or "impair" criteria, as appropriate.

### B. Specific Elements to Be Included in New UNE List

When the Local Competition Order was adopted, the FCC was in the unenviable position predicting which elements would be needed by competitors to achieve rapid and efficient entry into local telecommunications service markets.[27/] The Commission now has the benefit of three years of implementing the 1996 Act and observing emerging competition. As a facilities-based entrant in the market for local telecommunications services, MediaOne must obtain a relatively small number of network functions from incumbent LECs in order to provide full, effective, timely, and widespread local competition. Accordingly, MediaOne recommends that the Commission include the following modifications in its minimum set of unbundled elements.

#### 1. Operator Services / Directory Assistance

OS/DA services include functions that permit end users to locate subscriber information and obtain assistance from live or automated systems to connect calls. The Commission concluded in the Local Competition Order that competitive LECs should have unbundled access to OS/DA,[28/] and the Supreme Court upheld its determination that OS/DA services can be classified as "network elements" for purposes of section 251(c)(3).[29/] OS/DA services are obviously necessary in order for

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[26/] See AT&T v. Iowa Utilities Board, 119 S.Ct. at 734 ("Given the breadth of this definition, it is impossible to credit the incumbents' argument that a 'network element' must be part of the physical facilities used to provide local phone service").

[27/] Rule 319 provides for unbundling of the local loop; network interface device; local and tandem switching; dedicated and shared transport; signaling and call-related databases and service management systems; operations support systems functions; and operator services and directory assistance.

[28/] See Local Competition Order at ¶¶ 534-40.

[29/] See AT&T v. Iowa Utilities Board, 119 S.Ct. at 734.

competitive LECs to provide local service, and the absence of satisfactory alternative sources warrants the inclusion of these services as a UNE.

While OS/DA services are available from other vendors, MediaOne has found that these providers are unable to offer service at a level of quality equivalent to the services delivered by incumbents. Some of the differences between OS/DA services delivered by incumbent LECs and alternative providers are subtle, but they also prevent competitive LECs from offering services of equivalent quality at the same price as incumbent LECs. For example, alternative OS/DA vendors often use operators located far from competitive LEC's subscribers, and these operators are likely to be unfamiliar with the names of local communities. While these types of differences may seem trivial, they influence customer perceptions of service quality and raise competitors' costs in ways that favor incumbents simply based on their ability to use local personnel and facilities. The customer's perceptions of quality of service are especially crucial because many competitive LECs do not have an established reputation or brand identity in the market for local telecommunications services, and new entrants must win the confidence of their customers quickly if they are to have any hope of competing against an entrenched incumbent.

Incumbent LECs are in a position to provide superior OS/DA services largely because they have more immediate access to information about a subscriber's name and telephone number, which they enjoy by virtue of their position as the dominant provider of local telecommunications services. The result is reflected in longer average speeds to answer (ASA), with competitors providing ASAs in the range of 15 to 18 seconds while incumbents commit to ASAs of less than 6 seconds. Incumbent LECs also have an inherent advantage in speed and accuracy of updates to subscriber databases, which must be transferred to competitive OS/DA service providers, introducing errors and causing delays in the information available to subscribers.

In addition, competitive OS/DA services are often much more expensive than comparable services delivered by incumbent LECs. Three OS/DA providers asked to quote charges for line information database validation ("LIDB") submitted prices ranging from $.05 per transaction to $.10 per transaction, compared to an average charge of $.034 per transaction for incumbent LECs. The

cost of obtaining these services from alternative sources is driven higher by limits on local hubbing arrangements outside each OS/DA provider's immediate vicinity. Calls from MediaOne switches outside the OS/DA vendor's local calling area require the use of long haul facilities for transport to the OS/DA tandems. Without a wholesale agreement in place with an interexchange carrier, MediaOne could expect to pay up to $2000 per month per switch location for each DS1 transport to the alternative OS/DA vendor's tandem location. As a competitive LEC's business volume grows, it would be forced to add DS1 lines at a cost of as much as $1500 per month per DS1, compared to local loops used by incumbent LECs costing $500 per month.

MediaOne proposes that until the cost and service problems associated with alternative sources of OS/DA services are addressed, these services should be classified as a UNE. Specifically, the Commission should state that at the request of any telecommunications service provider, incumbent LECs must provide access to their OS/DA functions in the same manner in which they obtain access to these functions. Requesting carriers should have the option of receiving calls from subscribers through either direct or tandem trunking arrangements whenever technically feasible, and incumbent LECs should be required to provide electronic batch transfers and updates of directory assistance listing data to requesting carriers who want to provide directory assistance services through their own facilities.

2. Operations Support Systems

As originally adopted, Rule 319 defined OSS to include pre-ordering, ordering, provisioning, maintenance and repair, and billing services supported by an incumbent LEC's databases and information.[30/] The Commission acknowledged that access to functions provided by computer systems, databases, and personnel enable competitive carriers to communicate effectively and are "crucial" to new entrants' ability to compete effectively in the market for local telephone service.[31/]

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30/ See 47 C.F.R. § 51.319(f).

31/ See In the Matter of Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, Notice of Proposed Rulemaking, RM-9101 (released April 17, 1998) ("OSS NPRM") at ¶ 3; see also Local Competition Order at ¶¶ 520-521.

Media One sees no reason to alter the previously adopted definition of OSS, particularly because the Supreme Court explicitly rejected the arguments in this regard advanced by incumbent LECs.[32/]

Indeed, after conclusively establishing that services as well as physical components can be classified as "network elements," AT&T v. Iowa Utilities Board left little room to argue that OSS should not be available as a UNE, because competitive LECs obviously do not have any practical substitute for access to ILECs' OSS capabilities. As the Commission noted in the Local Competition Order, it is "absolutely necessary for competitive carriers to have access to operations support systems functions in order to successfully enter the local service market."[33/] The FCC should take this opportunity to clarify that incumbents must provide adequate information on the performance of their OSS to assure that competitive LECs are receiving nondiscriminatory access to UNEs and interconnection, as required by Section 251(c). Without access to this information, competitive LECs will be unable to provision services, seriously impairing their ability to attract and retain customers.

Today, as a matter of course, many competitive LECs experience lengthy delays in the processing of change orders, which sometimes results in customers losing access to both local and interstate telecommunications services for days or even weeks. Incumbent LECs have generally declined to provide competitive LECs with access to automated ordering and provisioning systems, forcing competitors to submit orders manually, which in turn results in high rates of human error and additional delays. Because most competitive LECs lack the brand power and established reputation of incumbent local service providers, a smooth change in service is a crucial step in winning the customer's confidence. It is obvious that unless OSS is deemed a UNE—and until provisioning problems are resolved—competitors' service will be much more than "impaired."

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[32/] See AT&T v. Iowa Utilities Board, 119 S.Ct. at 734. While the definition of OSS in Rule 319 should be reinstated, MediaOne urges the Commission to expedite the current OSS proceeding and put an end to the discriminatory OSS practices employed to tremendous anticompetitive effect by incumbent LECs.

[33/] Local Competition Order at ¶ 520.

3. Call-Related Databases, including CNAM

Call-related databases are SS7 databases that are used for billing and collection, or in the transmission, routing or other transmission of a telecommunications service.[34/] The Commission has found that access to these databases "is critical to entry in the local exchange market,"[35/] a conclusion not questioned in AT&T v. Iowa Utilities Board. The FCC should reinstate Rule 319's requirement for incumbent LECs to permit access to their signaling and call-related databases, "including but . . . not limited to" certain enumerated databases.[36/] In addition, the Commission should add an explicit guarantee of unbundled access to the Calling Name (CNAM) database of each incumbent LEC.

The CNAM database furnishes the name to associate with a calling number, allowing the terminating LEC to include the name as part of its subscriber's caller ID feature. Incumbent LECs generally provide access to their CNAM database to other LECs, but they charge rates that bear no apparent relationship to cost. For example, BellSouth has proposed to charge MediaOne a rate of 1 cent per query for access to its CNAM database in Florida, but only charges about 5 cents per line per month in Georgia. This means that with an average subscriber receiving approximately 225 calls per month, the Florida rate works out to $2.25 per line per month, or 45 times the Georgia rate. While MediaOne does not have data on BellSouth's CNAM costs, the large difference between rates for the same service in Georgia and Florida indicates that these charges are not currently based on forward-looking costs.[37/]

MediaOne cannot assess the costs associated with providing CNAM access, and BellSouth has insisted that it is not a database subject to unbundling. No other supplier can provide MediaOne with access to an incumbent LEC's CNAM data, however, particularly because real time access is an

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34/ See 47 C.F.R. § 51.319(e)(2).

35/ Local Competition Order at ¶ 484.

36/ 47 C.F.R. § 51.319(e)(1).

37/ Other incumbents charge even more; their prices range from 1.2 to 1.6 cents per query.

essential aspect of caller ID service. Denial of access plainly "impairs" the ability of competitive LECs to offer caller ID, a service desired by many customers.[38/] By establishing that CNAM is a UNE, the Commission would give competitive LECs the ability to obtain access to these databases at cost-based rates, allowing the delivery of caller ID services comparable to the offering of incumbents.[39/]

4. Unbundled Access to Network Terminating Wire in MDUs.

Network terminating wire ("NTW") is the transmission infrastructure connecting an incumbent LEC's loop distribution facilities to the end user's premises in an MDU. The interconnection point between the loop distribution plant and NTW is usually in a wiring closet, garden terminal, or some other type of cross-connect facility, and it is generally located at a minimum point of entry ("MPOE") to the building. Unbundled access to NTW is crucial to MediaOne's ability to reach customers living in MDUs. No currently-available technology provides a practicable alternative that would allow MediaOne to reach individual MDU units via its own facilities; the denial of access to NTW clearly would impair MediaOne's ability to serve MDU

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[38/] See Letter from Albert M. Lewis, Vice President for Federal Government Affairs, AT&T Corp., to Magalie Roman Salas, Secretary, Federal Communications Commission, submitted as an ex parte presentation in CC Docket No. 96-98 (February 11, 1999) at 30 ("recommending specific rule provision requiring unbundling of CNAM because competitors "cannot provide a comparable service offering without access to such information").

[39/] The Commission has ruled that calling name delivery is an "adjunct to basic" service and constitutes a telecommunications service. Therefore, CNAM is not an "enhanced" or "information" service outside the scope of the unbundling provisions of section 251(c)(3). See In the Matter of Rules and Policies Regarding Calling Number Identification Service – Caller ID, CC Docket No. 91-281, Memorandum Opinion and Order on Reconsideration, Second Report and Order and Third Notice of Proposed Rulemaking, 10 FCC Rcd 11700, 11746 at ¶ 131 (1995) (ruling caller ID is adjunct to basic service); In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21958 at ¶ 107 (1996) (finding adjunct to basic services should be classified as telecommunications services and not as information services).

residents. Accordingly, MediaOne requests that the Commission add incumbent-controlled NTW to the minimum array of UNEs that must be made available to competitors on a reasonable basis.[40/]

Only a few incumbents currently maintain control over NTW, but those that do can erect major competitive obstacles by denying competitors fair and efficient access. In its dealings with BellSouth, for example, MediaOne has encountered serious difficulties in reaching agreement on non-discriminatory access to NTW. Where the NTW is in a wiring closet, BellSouth has proposed to install an "access" cross-connect panel near the cross-connect panel that interconnects BellSouth's distribution plant with the NTW, and the competitive LEC is to interconnect its distribution plant to the access panel. A BellSouth technician then uses a "jumper" wire to cross-connect the access panel to the panel interconnecting BellSouth's distribution facilities to the NTW. BellSouth reserves the first NTW pair for its own use, and agrees to relinquish this first pair to the competitive LEC only if all "spare" pairs are in use and the end user wants to change service from BellSouth to the competitor. BellSouth appears to be unwilling to surrender the first pair to the competitive LEC to provide an additional line after the competitor has displaced BellSouth for the primary line.[41/] BellSouth proposes a charge of $171 for "first-time site preparation," which includes the connection of up to 25 NTW pairs. It would charge $40.47 for every subsequent site visit, and it wants to impose a $.60 per month leasing charge for each NTW pair provided.

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[40/] For purposes of the unbundling rules, NTW should be defined to include all incumbent-controlled transmission facilities connecting individual units within an MDU to a cross-connect point at the terminus of the incumbent's loop distribution facilities at the minimum point of entry (as that term is defined in section 68.3 of the Commission's rules).

[41/] In fact, BellSouth has indicated that it may not offer NTW as a UNE at all absent a specific requirement imposed by the FCC. If NTW is not unbundled, MediaOne would be forced to purchase an entire loop to obtain access to NTW, bypassing its own facilities. See Direct Testimony of Alphonso J. Varner, Docket No. 990149-TP (Florida PSC April 1, 1999) at 15 ("the specific list of network elements that must be provided will not be known until the FCC completes its proceeding on remand of rule 51.319. As an accommodation to MediaOne, BellSouth is willing to provide the NTW capability prior to completion of that proceeding. However, BellSouth reserves the right to reconsider whether it will continue to offer NTW upon completion of the FCC's proceeding.").

BellSouth's proposal for access to NTW is inefficient, expensive, inconvenient to customers, and discriminatory to competitive LECs. Because only BellSouth has access to its original cross-connect panel, BellSouth must send a technician to reconfigure the wiring at or near the MDU entrance in order to provision an NTW pair. When BellSouth provisions service for one of its own customers in the MDU, it does not need to call out a competitive LEC's technician, even if it is disconnecting a competitor's service. In fact, BellSouth often can provision service without dispatching a technician. BellSouth's NTW proposal, however, always requires the competitive LEC to pay for a technician whenever the competitor provisions service.

The result is that competitors must pay $40.47 every time a new customer orders service after the first site preparation visit to have a BellSouth technician rearrange the jumper wires between the cross-connects. A competitive LEC can reduce charges for technician visits by ordering NTW pairs for every unit in the building, but then it must pay BellSouth $.60 per month for each pair whether it has a customer for the pair or not. Even if the competitive LEC ordered an NTW pair for every unit, it would have to pay BellSouth for a technician's service call when a customer orders a second line.

Moreover, unless a competitive LEC wants to pre-wire NTW pairs to every unit, it must coordinate work by its own technicians with visits by BellSouth's workers. The BellSouth technician must finish work before the competitive LEC's employee arrives or the service connection will not work. The task of coordinating a single technician's visit with a customer's schedule is difficult enough, and adding a BellSouth technician's schedule to the mix would complicate matters even further, increasing the probability of disruptions, delays, and dissatisfied customers.

BellSouth's proposal also does not include a network interface device ("NID"), so the competitive LEC's technician must locate the "first" jack within the unit and reconnect the inside wiring to the NTW pair that BellSouth will allow the competitor to use.[42/] In many MDUs,

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[42/] Because BellSouth typically does not deploy NIDs within MDUs, the availability of unbundled NIDs provides no relief in this situation. Indeed, even if BellSouth were to make NIDs available in

BellSouth has not installed NIDs in each unit and claims that the demarcation point between the NTW and the inside wiring inside the unit is behind the "first" jack, the point where the NTW enters the unit. In these cases, the competitive LEC's technician must locate the first jack, disconnect the first NTW pair, and connect the competitive LEC's assigned pair. The jacks are not labeled, so the competitive LEC's technician has no way of knowing which is the "first" jack. The technician must remove each jack, inspect it, rewire it, and retest it to locate the first jack. If BellSouth wins back the customer, it will not have to go through this process, because the competitive LEC will have located the first jack.

In short, BellSouth's NTW operations place competitors at a serious disadvantage, because they would force competitive LECs to pay technicians employed by BellSouth to perform work that serves no useful purpose or could be performed by the competitive LEC. The Commission should foreclose such discriminatory NTW arrangements as part of its UNE rules.

## IV. THE COMMISSION SHOULD NOT ADOPT A MECHANISM TO REMOVE UNES AT THIS TIME

The Second FNPRM seeks comment on whether the FCC has authority to adopt a "sunset" provision that would eliminate the unbundling obligation for one or more elements automatically, i.e., on a date certain or upon the occurrence of a specified event without any subsequent action by the Commission.[43/] MediaOne believes that a mandatory sunset provision for the elimination of one or more network elements would undermine the market-opening goals of the 1996 Act and should be rejected. Neither section 251 nor any other provision of the 1996 Act gives the Commission the authority to write the unbundling obligations imposed by sections 251(c)(3) and 251(d)(2) out of the statute, and for the same reason, the FCC cannot give states the power to exempt incumbent LECs from unbundling requirements.

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MDUs, MediaOne would have no way of reaching them absent a reasonable means of obtaining access to NTW.

43/ See Second FNPRM at ¶¶ 36-40.

When the 1996 Act was signed into law, many lawmakers and observers predicted that competitors would enter the market to provide local services quickly, putting pressure on prices charged by incumbent LECs and eliminating the need for ongoing intervention by regulators. This was a laudatory goal. Three years later, however, local competition is only beginning to develop. Instead of opening their markets to competition, incumbent LECs have used a seemingly limitless variety of tactics to obstruct and delay competition, including the litigation that led to the rulemaking currently under consideration in this proceeding.

At the same time, the regional Bell operating companies have demanded relaxation of restrictions on their lines of business, gambling that by waiting out regulators they could obtain permission to enter the long distance market without giving competitors any reasonable opportunity to serve their local customers. In light of the development – or lack thereof – of local competition since the passage of the 1996 Act, any decision that establishes a date certain for the elimination of UNEs is an invitation for incumbent LECs to adopt a run-out-the-clock strategy while continuing to press for access to long distance markets.

Of course, the RBOCs will argue that once they have satisfied the competitive checklist that stands as a precondition to long distance entry, the market-opening provisions of sections 251 and 252 will be superfluous. This contention is totally untenable as a matter of statutory interpretation, because the unbundling requirements and other obligations imposed by sections 251 and 252 are independent of sections 271 and 272.[44/] The idea of excusing RBOCs from obeying the unbundling

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[44/] Section 10 of the 1996 Act forbids the Commission to forbear from applying the requirements of sections 251(c) and 271 "until it determines that those requirements have been fully implemented." 47 U.S.C. § 160(d). This provision does not, however, call for relaxation of the unbundling requirements and other market-opening mechanisms of the 1996 Act once an RBOC has complied with section 271. In fact, it indicates that the Commission should not even consider relaxing the unbundling rules until after the RBOCs have demonstrated their compliance. Even then, until meaningful competition has had the chance to develop, the public interest would not be served by eliminating the remaining checks on anticompetitive conduct by incumbent LECs.

requirements following long distance entry also would encourage "backsliding" on market-opening measures adopted solely to win section 272 approval.[45/]

Other proposed mechanisms for the elimination of reduction of unbundling requirements are similarly flawed. For example, a rule allowing incumbent LECs to petition the Commission for removal of certain network elements on a case-by-case basis would defeat the principal purpose of minimum national UNE standards, namely, creating the certainty needed to facilitate the development of competition. In addition, this proposal would lead to scores of piecemeal challenges by incumbent LECs, causing substantial administrative burdens on the Commission and interested parties that would almost certainly outweigh any benefits of such a case-by-case approach.

Instead of selecting a specific date or milestone for elimination of one or more UNEs, changes to the national set of UNEs established in this proceeding should be left to future rulemakings. The Commission and interested parties should compile a record sufficient to determine whether competition has evolved to the extent that a modification to the national list of unbundled network elements is warranted. At that time, the ILECs should be required to overcome a presumption in favor of continuing each unbundling requirement. By placing the burden on incumbent LECs, the FCC will discourage incumbents from filing a blizzard of baseless rulemaking petitions that would force competitors and the Commission to undertake burdensome analyses of emerging technical capabilities and market developments.

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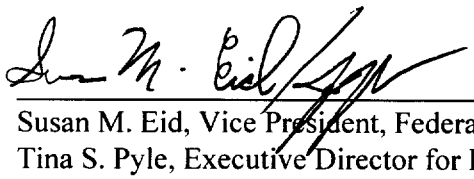
[45/] See In the Matter of The Development of a National Framework to Detect and Deter Backsliding to Ensure Continued Bell Operating Company Compliance with Section 271 of the Communications Act Once In-region InterLATA Relief Is Obtained, Allegiance Telecom, Inc., Petition for Expedited Rulemaking, RM-9474 (filed February 1, 1999).

## CONCLUSION

For the reasons outlined above, MediaOne urges the Commission to adopt the recommendations set forth herein to encourage the rapid development of competition in the market for local telecommunications services.

Respectfully submitted,

**MEDIAONE GROUP, INC.**



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## DECLARATION OF GREGORY M. BRADEN

I, Gregory M. Braden, do hereby declare and state under penalty of perjury as follows:

1. I am the Vice President-Telephony for MediaOne. In that position, I have general supervisory and management responsibility over MediaOne's telephony operations.

2. I have read the foregoing Comments of MediaOne. With respect to statements made in the Comments, other than those of which official notice can be taken, the facts contained therein are true and correct to the best of my personal knowledge, information, or belief.

Gregory M. Braden

Date: May 26, 1999

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CERTIFICATE OF SERVICE

I, CATHY QUARLES, hereby certify that on this 26th day of May, 1999, I caused copies of the foregoing "COMMENTS OF MEDIAONE" to be served by U.S. mail, first class, postage prepaid, or by hand delivery (*) on the following:

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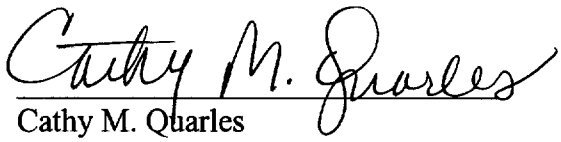

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